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March 28, 2002

*Ex Parte*

VIA ELECTRONIC FILING

Carol Matthey  
Deputy Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC, 20554

Re: Bell Atlantic Corp. and GTE Corp., CC Docket No. 98-184

Dear Ms. Matthey:

AT&T Corp. ("AT&T") hereby responds to Verizon Communications, Inc.'s ("Verizon's") new argument, made for the first time in its Reply Comments, that the \$150 million it seeks to have applied against its obligation under Condition XVI is an "investment in, or contribution to, ventures that provide Competitive Local Service activity in Out-of-Region Markets by those ventures," under paragraph 45 of the Merger Conditions.<sup>1</sup> The Public Notice, and Mr. Evans' letter as to which public comment is sought, asserted only that Verizon sought to have it applied against its obligation under

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<sup>1</sup> *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order, CC Docket No. 98-184, 15 FCC Rcd. 14032 (rel. June 16, 2000) ("Bell Atlantic Merger Order"), Conditions, ¶ 45.*

Condition XVI because Verizon had “spen[t]” money to “obtain” “facilities” within the meaning of paragraphs 43 and 44 of the Merger Conditions.<sup>2</sup>

Contrary to Verizon’s claim, AT&T did not in its Comments (which anticipated that request), “attempt to impose an entirely new condition found nowhere in the Merger Conditions or in the Commission’s statements” as claimed by Verizon.<sup>3</sup> Rather, AT&T explained that the plain straightforward reading of words “investment in, or contribution to *ventures*” – not “entities” – meant that the result of the investment would be a “*venture backed by the reputation of Verizon as an investor*” and would not be satisfied by the failure to get back money deposited for the purchase of a controlling interest in an “entity” where Verizon had publicly repudiated its relationship with that entity.<sup>4</sup>

That interpretation is supported by the Commission’s Order. As the Commission may recall, Verizon drafted the language used in the Merger Conditions, and in urging the Commission to accept it, Verizon represented to the Commission that it would use GTE’s local service facilities as a “spring-board” for meaningful facilities based out-of-region entry, and further represented that this \$500 million out-of-region commitment was only a part of *its broader* “investment” in pursuing *its* (not another entity’s) “strategy of becoming a full service provider on a nationwide basis.”<sup>5</sup> Thus, Verizon led the

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<sup>2</sup> Letter by Gordon R. Evans, Vice President, Federal Regulatory, to Ms. Carol Matthey, Deputy Chief, Common Carrier Bureau, dated March 7, 2002 (“Evans Letter”) at 2, citing to Appendix D to the *Bell Atlantic Merger Order*, Conditions, ¶¶ 43-44.

<sup>3</sup> Reply Comments of Verizon, filed March 22, 2002 (“Verizon’s Reply Comments”) at 6.

<sup>4</sup> Letter comments of AT&T Corp. Opposing Verizon Communications, Inc.’s Letter, filed March 19, 2002 (“AT&T’s March 19 Comments”) at 7, notes 19 and 21.

<sup>5</sup> Reply of Bell Atlantic and GTE in Support of their Supplemental Filing, CC Docket 98-184, filed March 16, 2000 at 17.

Commission to believe that any venture would include Verizon. And, in accepting the commitment as submitted by Verizon, the Commission stated in its Order that it understood that Verizon's commitment was "*sufficient to ensure* that residential consumers and business customers outside of Bell Atlantic/GTE's territory will benefit from *meaningful, facilities-based competitive service.*"<sup>6</sup> What the Commission "anticipated" was that this "ensured" benefit "will stimulate competitive entry into the Bell Atlantic/GTE region by the affected incumbent LECs," i.e., retaliation. Obviously, there would be no retaliation unless Verizon itself is viewed by the other RBOCs as the company that is invading their territory.

Verizon's interpretation of the merger commitments, on the other hand, would, as noted in AT&T's March 19 letter and in the letters of other Commenters, allow Verizon to enter into patently sham transactions which would not result in anyone providing out-of-region service *in furtherance* of the "ensured" benefits described in the Order. As in any contract interpretation, if there is any ambiguity, the language is construed against the drafter, *i.e.*, Verizon. Indeed, if Verizon believed at the time that the text of the Commission's Order was inconsistent with or overstated the scope of its out-of-region merger commitment, it would have petitioned the Commission to change the Order or have appealed it. That is not something that Verizon did. Clearly, either Verizon knew that the text of the Commission's Order did, in fact, describe the scope of that merger commitment or Verizon intentionally mislead the Commission into believing that the Commission's goals were satisfied by the merger commitments, believing that it would

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<sup>6</sup> *Bell Atlantic Merger Order* ¶ 321 (emphasis added).

later argue, as it is doing now, that it can ignore the Order and see if it could parse the narrowest interpretation of its obligation under the ordering clause.

Finally, Verizon did not rely on the “investment” language of paragraph 45 of the *Bell Atlantic Merger Order* in its initial request because the \$150 million was not viewed as an investment; rather it was essentially “earnest money” or deposit on a larger transaction that was never consummated. The \$150 million Stock Purchase Agreement itself asserts that the Agreement was made “concurrently” with the NorthPoint Merger Agreement, and provided that it could be terminated at any time prior to the Closing Date “by either Verizon or NorthPoint if the Merger Agreement shall have been terminated prior to the Closing.”<sup>7</sup> Verizon also described the \$150 million in their Joint Verizon/NorthPoint Merger Application as part of the payment for the acquisition of NorthPoint.<sup>8</sup>

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<sup>7</sup> Securities Purchase Agreement By and Between Bell Atlantic Corporation (d/b/a Verizon Communications) and NorthPoint Communications Group, Inc., Dated as of August 7, 2000, <http://www.sec.gov/Archives/edgar/data/732712/000095017200001554/0000950172-00-001554-0002.txt>. The first “WHEREAS” clause and Section 8.1(b). The price for the 9% convertible debentures (\$1,000/share), Section 1.2, supports the conclusion that this was no more than a deposit. The Street valued the Verizon offer at “roughly \$15.70-\$23.90 per share for NPNT shareholders,” *see, e.g.*, RBC Dominion Securities, reported by First Call Research Notes, August 8, 2000.

<sup>8</sup> *See*, Attachment 3 to the *Joint Application for Consent To Transfer Control Filed By NorthPoint Communications, Inc. And Verizon Communications*, CC Docket No. 00-157 (“Verizon/NorthPoint Merger”), filed August 25, 2000, Attachment 3 (“Description of Transaction,” describing the \$150 million as part of the overall transaction). It is noteworthy that, assuming the 9% convertible debentures purchased by Verizon had voting rights and constituted less than 10% of the outstanding voting shares, this acquisition would not have qualified under the “investment” exemption of the Hart-Scott-Rodino Improvement Act of 1996 (“HSR”) because it would have been viewed as part of the larger transaction. *See*, 16 C.F.R. § 802.9 and 16 C.F.R. §801.1(i)(1). *See*, Statement of Basis and Purpose for HSR Regulations, 43 Fed. Reg. 33465 (July 31, 1978).

Verizon's attempt, once again,<sup>9</sup> to interpret its merger commitments out of existence, must be rejected if there is to be any public confidence in the integrity of the Commission's merger review process.

Sincerely,

/s/ Aryeh S. Friedman  
Aryeh S. Friedman

cc: Carol Matthey  
Anthony Dale  
Mark Stone  
Qualex International at [qualexint@aol.com](mailto:qualexint@aol.com)  
Gordon R. Evans, Vice President, Federal Regulatory, Verizon

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<sup>9</sup> AT&T's March 19 Comments, at 2 n. 2 describes the many other instances.

CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 28th day of March, 2002, a copy of AT&T Corp.'s further Comments Opposing Verizon Communications, Inc.'s Letter Request was mailed by U.S. mail, first class delivery, postage prepaid, on the parties listed below:

William Caton, Acting Secretary\*  
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/s/ Karen Kotula  
Karen Kotula

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\* Electronically served